IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 13.06.2007

Coram:-

The Honourable Mr. Justice F.M.IBRAHIM KALIFULLA
and
The Honourable Mr.Justice S.TAMILVANAN

Writ Petition No.12663 of 2001
& WPMP No.18620 of 2001

Union of India, rep. by the
Chief Electrical Workshop Engineer,
Carriage Works, Southern Railway,
Perambur, Chennai-600 023. .. Petitioner

Vs.

1.The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai-104.

2.S.Rudramurthi,
No.1, HSV Koil Street,
Periakuppam, Tiruvellore-602 001 .. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorari to call for the entire records of the first respondent in O.A.427 of 1998 including the order dated 17.10.2000 and quash the same.

For Petitioner : Mr.V.G.Suresh Kumar
For 2nd Respondent : Mr.Vinothkumar

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ORDER

(Order of the Court was made by F.M.IBRAHIM KALIFULLA,J.)

The Union of India represented by the Chief Electrical Workshop Engineer, Carriage Works, Southern Railway (hereinafter referred to as the "Southern Railway") is the petitioner. The challenge is to the order of the Central Administrative Tribunal dated 17.10.2000 passed in O.A.No.427 of 1998, the second respondent herein, who was working as Welder Grade-III from September 1990, was making representations for promotion to the next higher grade. He was trade tested in January 1997 and was declared as qualified and his name was also placed in the select

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list for the post of Welder Grade-II published on 05.03.1997. By an order dated 02.03.1998, he was promoted to the post of Welder Grade-II. The second respondent also joined the said post. However, by subsequent order dated 18.03.1998, the said promotion issued to the second respondent was cancelled with immediate effect. Aggrieved against the same, the second respondent moved the Central Administrative Tribunal by way of O.A.No.427 of 1998. The Tribunal, having set aside the order dated 18.03.1998, directed for pay fixation and seniority on notional basis in the Grade of Welder-II without any arrears and pay allowances. Aggrieved against the same, the petitioner has come forward with this writ petition.

2. Mr.Suresh Kumar, learned counsel appearing for the petitioner contended that on 02.03.1998, when the second respondent was promoted to the post of Welder Grade-II, there was no vacancy available and that in order to accommodate him in that post of Welder Grade-II, the post of Mechanical Fitter was transferred to the post of Welder Grade-II, in which post the second respondent came to be accommodated. The learned counsel would, therefore, contend that such a practice of transferring a post from one category to another was not permissible under any law or rule prevailing in the Southern Railways and therefore, on noticing such an irregularity committed while granting promotion to the second respondent on 02.03.1998, the same came to be rectified by issuing the cancellation order dated 18.03.1998. The learned counsel, therefore, contended that the Tribunal ought not to have interfered with the said order dated 18.03.1998.

` 3. As against the above said submissions, Mr. Vinodh kumar, learned counsel appearing for the second respondent contended that the transfer of post from one category to another was not uncommon in the Southern Railway, that since the second respondent was not functioning in the post of Welder Grade-III for a very long time, considering his right to promotion, it was given to him on 02.03.1998 by transferring the post of Mechanical Fitter to the post of Welder Grade-II and therefore, cancellation of the said promotion was rightly interfered with by the Tribunal.

4. Having heard the counsel for the respective parties and on careful consideration of the order impugned in the writ petition, we find that no part of the order the Tribunal has referred to any statutory rule or regulation or any other provision of law or any other binding terms as between Southern Railways and the Work Force to show that the practice of transferring any post from one category to another was not available in order to support the action of the Southern Railway in having transferred the post of Mechanical Fitter to that of Welder Grade-II solely with a view to accommodate the second respondent. In our considered opinion, in the absence of any statutory provision or a detailed agreement between the parties viz., the Southern Railway and the employees, such a practice of transferring any post from one category to another was not permissible in law. To that extent, the position can be safely stated. The initial promotion granted to the second respondent by order dated 02.03.1998 by transferring a post from one Department to another Department so as to accommodate the second respondent ought not to have been made. Therefore,

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when such an irregularity was noted by the concerned authorities, it appears that the same was set right by cancelling the order of promotion dated 02.03.1998. In fact, such a cancellation came to be made within a matter of about 15 days time and thereby, no serious prejudice was caused to the second respondent. Moreover, the second respondent is stated to have been promoted on regular basis to the post of Welder Grade-II by order dated 05.06.2001. Therefore, as on date, the second respondent's grievance about the non-grant of promotion to him also no longer survives. Inasmuch as the order impugned before the Tribunal having been set aside and the cancellation order of irregular promotion is not supported by any rule or regulation, we are not in a position to sustain the order of the Tribunal. The writ petition therefore stands allowed. The impugned order is set aside. No order as to costs. Consequently WPMP No.18620 of 2001 is closed.

raa

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Chief Electrical Workshop Engineer,
Union of India,
Carriage Works, Southern Railway,
Perambur, Chennai-600 023.

2.The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai-104.

3. The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.V.G.Suresh Kumar, Advocate Sr.No.35043.

+1 cc to Mr.K.Elango, Advocate Sr.No.35085.

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